

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-10917 PBS

The HipSaver Company, Inc.,
Plaintiff,
v
J.T. Posey Company,
Defendant.

J.T. Posey Company, Inc.,
Counterclaim Plaintiff,
v
The HipSaver Company, Inc. and
Edward L. Goodwin,
Counterclaim Defendants.

**PLAINTIFF'S MOTION TO COMPEL SUBSTANTIVE RESPONSE TO ITS
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

The Defendant, J.T. Posey (“Posey”) has stonewalled essential discovery by refusing to make any substantive response whatsoever to HipSaver’s Second Request for Production of Documents. Defendant’s refusal to respond to HipSaver’s Second Request significantly impedes HipSaver’s ability to prepare for trial, and specifically, HipSaver’s ability to prepare its expert case.

Accordingly, for the reasons stated in the accompanying memorandum, HipSaver requests an order under Rule 37 of the Federal Rules, compelling immediate, substantive

response to HipSaver's Second Request for Production of Documents. Alternatively, HipSaver seeks an order **1)** barring the Defendant from presenting *any* expert testimony or expert evidence at trial or any other document, data, information, chalk, or exhibit at trial; and **2)** permitting HipSaver to prepare and present an expert damages case based on national marketplace information alone.

CERTIFICATE PURSUANT TO CIVIL LOCAL RULES 7.1 and 37.1

I certify that counsel to the parties conferred by telephone on February 7, 2006, and were unable to resolve the issues identified in this Motion.

Respectfully submitted,
THE HIPSAVER COMPANY, INC.
By its Attorneys,

/s/ Courtney M. Quish

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Dated: February 8, 2006

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish

February 8, 2006